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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,040	06/25/2003	Pierre-Stephane Dufourg	218728-000191	3933
28465	7590	02/14/2006	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US LLP			CHAN, KO HUNG	
P. O. BOX 64807			ART UNIT	
CHICAGO, IL 60664-0807			PAPER NUMBER	

3632

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/606,040

Applicant(s)

DUFOURG, PIERRE-STEPHANE

Examiner

Korie H. Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 103***

Claims 1-3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over in Simon (US patent no. 5,531,410) view of Hatch (US patent no. 1,559,695). Simon discloses a cable conduit running longitudinally in a first direction and comprising at least one substantially U-shaped section that has a bottom (70) and two lateral flanges (71) having open ends with length greater than its width, the conduit delimiting an interior volume capable of accommodating pipes lines running longitudinally the first direction, the conduit comprising rigid lengthwise wires (8) running substantially parallel to the first direction and rigid crosswise wires (70) running substantially at right angles to the first direction, the crosswise wires being fixed the lengthwise wires toward the interior volume of the conduit, and each crosswise wire comprising base portion (70) belonging to the bottom of the conduit and two lateral branches (71) belonging respectively to each lateral flange of the conduit. However, Simon does not disclose the bends of the lengthwise wires being designed to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level.

Making a level and planar surface on supports made of weaved wires via bends are conventional and well-known. It has the well-known advantage of providing a desired flat surface in a meshed wire supporting frame to simulate supports made of expensive flat panels or to eliminate tilting or obvious distortion of the article if mounted on irregular surface. Hatch demonstrate such desire to make meshed wire frames with flat support surface. Hatch teach such wire frame running longitudinally in a first

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direction and comprising at least one substantially U-shaped section that has a bottom (6) and two lateral flanges (4), the conduit delimiting an interior volume capable of accommodating pipes lines running longitudinally the first direction, the conduit comprising rigid lengthwise wires (5) running substantially parallel to the first direction and rigid crosswise wires (4 and 6) running substantially at right angles to the first direction, the crosswise wires being fixed the lengthwise wires toward the interior volume of the conduit, and each crosswise wire comprising base portion belonging to the bottom of the conduit and two lateral branches belonging respectively to each lateral flange of the conduit, wherein at least the lengthwise wires belonging to the bottom of the conduit each comprise a succession of longitudinal portions (5) connected by bends (7) protruding away from the interior volume of the conduit, the bends of the lengthwise wires being designed to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level; wherein the longitudinal portions of the lengthwise wires are straight and parallel to the first direction wherein the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires are arranged substantially the same plane (page 1, lines 55-58) such that the items carry on the plane will rest on both the transverse and longitudinal bottom members so that there's no tendency for unwanted tilting of the item supported thereon (page 1, lines 70-76).

It would have been obvious to one of ordinary skill in the art to have modified the base of Simon by providing bends to the lengthwise wires to accommodate the base

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portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level so that the items supported may lie flatly on both the transverse and longitudinal member as taught to be desirable by Hatch

Claims 4-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US patent no. 5,531,410) in view of Hatch (US patent no. 1,559,695) as applied to claim 1 above, and further in view of Yake (US patent no. 4,046,261). Simon and Hatch combined disclosed all the claimed features of applicant's invention except for the width of the bend is the same as or greater than two times the crosswise wire and that the bends each with a flat bottom. Yake teaches a bottom surface made of lengthwise and crosswise wires where the lengthwise has bends (where wire 4 and 9 rests) has flat bottom and having a bend width greater than twice the width of the crosswise wire (4 and 9, figure 3). It would have been obvious to one of ordinary skill in the art to have modify the bend of Simon and Hatch combined such that the bend has a flat bottom with a width greater than two times the crosswise wire as taught by Yake to facilitate stability. Furthermore, it would have been an obvious matter of design choice to provide the bend width the same as or greater than two times the crosswise wire since applicant fail to disclose the criticality to having a bend width of the same or greater than two times the width of the crosswise wire. Moreover, it appears other widths would perform as well.

### ***Response to Arguments***

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Applicant's arguments filed 11/30/2005 have been fully considered but they are not persuasive. Applicant argues there's no motivation to combine the teachings of Hatch nor Lin since Hatch is directed to a bottle carrier and Lin is directed to a pallet while applicant's carrier is concerned with cable lying conduits. Examiner respectfully disagrees. The primary reference Simon demonstrates a cable lying conduit of wire type in the same field of endeavor as applicant's device. Simon does not teach providing a flat surface. Examiner's motivation to combine comes from the fact that to make planar level support surface in wire frames are notoriously old and well as demonstrated by Hatch and various art cited of record. The advantages or motivation for providing these flat surfaces are basically to simulate a flat surface to provide level support as disclosed in Hatch or Lin. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching to do so is found in the reference themselves as well as in the knowledge generally available to one of ordinary skill in the art. Indeed, making a level and planar surface on

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supports made of weaved wires via bends are conventional and well-known. It has the well-known advantage of providing a desired flat surface in a meshed wire supporting frame which simulate supports made of expensive flat panels to eliminate tilting or obvious distortion of the article if mounted on irregular surface. Hatch demonstrate such desire to make meshed wire frames with flat support surface. The previously cited prior art devices of Lin's two references also show such old and well-known advantage of providing bends in a mesh wire for receiving crosswise wires for providing a flat supporting surface.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 571-272-6816. The examiner can normally be reached on Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Korie H. Chan  
Primary Examiner  
Art Unit 3632

khc  
February 7, 2006